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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/685,770	10/14/2003	Thomas W. Kampf	2316.1220USD1	6337
23552	7590	02/14/2006	EXAMINER	
MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903			OMGBA, ESSAMA	
			ART UNIT	PAPER NUMBER
			3726	

DATE MAILED: 02/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/685,770	KAMPF ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Essama Omgba	3726	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 November 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Merckle (US Patent 3,351,699).

With regards to claims 1, 3 and 5, Merckle discloses a method of assembling a cable routing system comprising providing a routing system comprising a base element 28 with a planar top surface, the top surface having linear mating edges on opposite sides of the planar top surface, each linear edge having a continuous cross-section along the length of each linear mating edge, a plurality of side elements 29 mounted to the base elements along the linear mating edges, a first plurality of the side elements having an upstanding wall portion extending to a vertical height above the planar top surface of the base elements, a second plurality of the side elements defining side exits extending transversely relative to the linear mating edges and generally parallel to the planar top surface, see column 2, lines 24-46 and figures 1-3. Although the elements of the cable routing system of Merckle are integrally formed, it would have been obvious to one of ordinary skill in the art at the time the invention was made to construct the cable routing system of Merckle in various elements since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art.

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*Nerwin v. Erlichman*, 168 USPQ 177, 179. Furthermore although side elements 29 are integrally formed with base element 28, the side elements could be considered mounted on the base element as they extend above the planar surface of the base element.

Although Merckle does not disclose the base element mounted at a vertical height above a telecommunications bay, however it is within the general knowledge of one of ordinary skill in the art to appropriately mount the base element. Furthermore the location of the base element is an obvious matter of

design choice depending on the particular application. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made, to have mounted the base element of Merckle at a vertical height above a telecommunications bay as is within the general knowledge of one of ordinary skill in the art.

For claims 2, 4 and 6, see figure 3. Applicant should note that the particular side elements will depend on the particular application and their choice is well within the general knowledge of one of ordinary skill in the art.

### ***Response to Arguments***

3. Applicant's arguments with respect to claims 1, 3 and 5, as they relate to the Nicoli reference, have been considered but are moot in view of the new ground(s) of rejection.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon

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hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). The referenced case law in the rejections supports the fact that it is within the general knowledge of one of ordinary skill in the art to construct a formerly integral structure in various elements.

In view of the above remarks, the examiner maintains that a *prima facie* case of obviousness has been established in the instant application.

### ***Conclusion***

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Essama Omgba whose telephone number is (571) 272-4532. The examiner can normally be reached on M-F 9-6:30, 1st Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marc Jimenez can be reached on (571) 272-4530. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Essama Omgba  
Primary Examiner  
Art Unit 3726

eo  
February 5, 2006